Supreme Court, U.S.
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No. 95-1999

In The

Supreme Court of the United States

October Term, 1995

STATE OF NEBRASKA,

Petitioner,

vs.

DENNIS RYAN,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State of Nebraska

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Submitted by:

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REASONS FOR OPPOSING THE WRIT

WHETHER THE DECISION OF THE HIGHEST STATE COURT INTERPRETING A STATE STATUTE IS BINDING UPON THE UNITED STATES SUPREME COURT.

ARGUMENT

This petition is the second time the State of Nebraska has asked the Court to substitute its judgment for that of a state appellate court in the matter of interpretation of state law. Only a few months ago the same issue was presented to the Court in *State of Nebraska v. Ronald E. Williams*, No. 95-242. That petition was denied, as this one should be.

The Nebraska Supreme Court has consistently interpreted Nebraska's second degree murder statute as requiring malice as an essential element of that crime. There are no constitutional issues arising from this interpretation regardless of any disputes that may exist concerning the sagacity of the decision.

The real issue here is whether the United States Supreme Court can substitute its judgment for that of the highest court of a state in the matter of interpretation of state law. Are there any cases authorizing such review of state court determinations involving state statutes? The petition cites none, a tacit admission that none exist. On the contrary, this Court has held that a state's courts are the final arbiters of the state's own laws. *Wardius v. Oregon*, 412 U.S. 470, 37 L.Ed.2d 82, 93 S.Ct. 2208 (1973). This ruling was first made in the case of *Leavenworth County v. Barnes*, 94 U.S. 70, 24 L.Ed 63 (1876), which held that the decision of the highest state court upon a state

statute is binding upon the United States Supreme Court. Other decisions of this Court to the same effect are: *Dorchy v. Kansas*, 264 U.S. 286, 44 S.Ct. 323, 68 L.Ed 686 (1924); *Noble v. Mitchell*, 164 U.S. 367, 17 S.Ct. 1110, 41 L.Ed 472 (1896); *Luther v. Borden*, 7 How 1, 12 L.Ed 581 (1849); *Elmendorf v. Taylor* 10 Wheat 152, 6 L.Ed 289 (1825); and *Bodley v. Taylor*, 5 Cranch 191, 3 L.Ed 75 (1809).

Petitioner is nothing more than an unhappy litigant who, dissatisfied by the ruling of a state court on a question of state law, seeks to have this Court render a different interpretation through the guise of a contention that the Nebraska Supreme Court was judicially legislating. This same criticism was levelled at this Court when it decided *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705 (1973); *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954); *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966); and all the other cases that were unpopular with various persons and groups. The reasoning of petitioner in this respect not only unravels in a field of sophistry, but it pays no heed to history. This Court has continually, as demonstrated by the cases cited above, refused to revise statutes of any state upon any grounds of justice, policy or constitutionality. As a matter of historical fact, this Court specifically said it has no authority to revise the statutes of a state. *Orr v. Gilman*, 183 U.S. 278, 22 S.Ct. 213 (1902).

The opinion of the Nebraska Supreme Court, which the petitioner seeks to have reviewed, appears as Appendix "1" in petitioner's Petition for Writ of Certiorari. That opinion, which petitioner argues is judicial legislation, is nothing more than a well reasoned opinion interpreting the state's statute and setting out, in irrefutable logic,

why malice is still an element of the crime of second degree murder. As noted in the opinion, the interpretation of the murder statute is nothing more than a holding which the Nebraska Supreme Court has adhered to over the last 11 years. Such is hardly the material to base a claim of "judicial legislation" on.

If this Court were to accept the argument of the petitioner, it would place itself in a position of having to constantly review each decision of every state supreme court where one claimed an erroneous interpretation of state law. This Court has neither the time nor the jurisdiction for such matters.

This Court will, in dealing with the effect of a state statute, treat it as being intended to operate as the highest court of the state had construed it. *Bunch v. Cole*, 263 U.S. 250, 44 S.Ct. 101, 68 L.Ed 290 (1923).

This holding and the others cited above have never been reversed and they are dispositive in this case.

CONCLUSION

Respondent has cited numerous cases from this Court which specifically hold that a state's courts are the final arbiters of the state's own laws. Petitioner has not been able to cite a single holding to the contrary. If such a case exists, the Petitioner was unable to find it.

Petitioner's reference to the fact that the decision it complains about was the result of a bare majority of the Nebraska Supreme Court is of no significance, as the margin of victory is immaterial regardless of whether it

was by a single run or single point. Many of the controversial rulings of this Court have been by a bare majority, and those decisions are the law of the land regardless of any differences of opinions that the Justices may have had.

The Petition for the Writ of Certiorari should be denied.

Respectfully submitted,

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